

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DON WHATLEY, #623150

§

§

v.

§ CIVIL ACTION NO. G-03-341

§

DOUG DRETKE, DIRECTOR
OF TDCJ-CID

§

§

ORDER

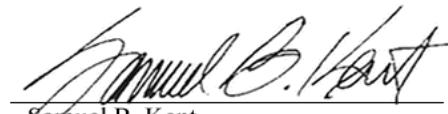
Before the Court is the Report and Recommendation of the United States Magistrate Judge that was entered on April 26, 2006. Petitioner has filed his Objections to the Report and Recommendation in a timely manner.

Petitioner argues, in relevant part, that he is entitled to an evidentiary hearing to determine what evidence supports his claim that a tape used at trial was altered by the prosecution. However, his primary evidence – the prosecutor allegedly admitted this fact at trial – is simply untrue, as shown by the Magistrate Judge. No evidence of tampering was brought forward during trial when the evidentiary basis for such an allegation was readily available, and Petitioner's right to an evidentiary hearing is therefore governed by the narrow exceptions of 28 U.S.C. § 2254(e)(2). *Murphy v. Johnson*, 205 F.3d 809, 816 (5th Cir. 2000). The Court finds that Petitioner's allegations do not entitle him to an evidentiary hearing. His remaining Objections are also without merit.

Having given this matter *de novo* review under 28 U.S.C. § 636(b)(1)(C), this Court finds that Petitioner's Objections are without merit and that the Report and Recommendation should be **ACCEPTED**.

Accordingly, it is **ORDERED** that the Petition for a Writ of Habeas Corpus of Don Whatley (Instrument No. 1) is **DISMISSED**.

DONE at Galveston, Texas this 17th day of May, 2006.



Samuel B. Kent
United States District Judge